

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LAUREL PARK COMMUNITY, LLC, a Washington
limited liability company; TUMWATER ESTATES
INVESTORS, a California limited partnership;
VELKOMMEN MOBILE PARK, LLC, a Washington
limited liability company; and MANUFACTURED
HOUSING COMMUNITIES OF WASHINGTON, a
Washington non-profit corporation,

Plaintiffs,

v.

CITY OF TUMWATER, a municipal corporation,

Defendant.

No. C09-05312BHS

PLAINTIFFS' RESPONSE TO
DEFENDANT'S OBJECTION
TO RENOTING OF
PLAINTIFFS' PARTIAL
SUMMARY JUDGMENT
MOTION

A. INTRODUCTION

Plaintiffs Laurel Park Community, LLC, Tumwater Estates Investors, Velkommen Mobile Park, LLC, and Manufactured Housing Communities of Washington (collectively "the park owners") have received the objection of the defendant City of Tumwater ("Tumwater") to their request to renote their partial summary judgment motion for consideration on April 9, 2010. Nothing in Tumwater's objection should prevent the renoting of the park owners' partial summary judgment motion.

B. RESPONSE

On February 19, 2010, the park owners filed a motion for partial summary judgment on

1 the takings/due process issues involved in this case. Although LCR 7(d)(3)¹ permitted the park
2 owners to note their motion as early as March 19, 2010, they noted the motion for consideration
3 with oral argument on March 26, 2010. By doing so, the park owners provided Tumwater with
4 an additional week's notice of the motion. Tumwater filed its response on March 22, 2010. The
5 park owners' reply would normally be due on March 26, 2010. *Id.*

6 But before filing its response, Tumwater filed a cross motion for summary judgment and
7 unilaterally noted it for consideration with oral argument on April 9, 2010. Tumwater did not
8 provide the park owners with additional notice of the cross motion because it noted the motion
9 for the earliest possible date permitted under the local rules. The park owners thus received less
10 notice than they had provided to Tumwater. Tumwater did not contact the park owners' counsel
11 to confer about the scheduling of its motion. The park owners' response in opposition to
12 Tumwater's cross motion is due on April 5, 2010 and Tumwater's reply in support is due on
13 April 9, 2010. LCR 7(d)(3).

14 On March 24, 2010, the park owners contacted the Court to renote their partial summary
15 judgment motion. Contrary to Tumwater's assertions, Obj. at 2, they provided the Court with
16 sufficient reason to permit the renote. The park owners, as the moving party, have the right to
17 note when their motion will be heard in accordance with the local rules. Renoting the motion
18 makes sense, since Tumwater's cross motion and its response in opposition raise nearly identical
19 issues for the Court's consideration. As the park owners indicated, it would be more efficient to
20 set both motions for consideration on the same day so that the Court would have everything
21 before it. Based on the renote date, the park owners would file their response in opposition to
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23
24

25 ¹ LCR 7(d)(3) provides, in part: "... all dispositive motions ... shall be noted for consideration no earlier
than the fourth Friday after filing and service of the motion."

1 Tumwater's cross motion on April 5, 2010 and both parties would file their respective reply
2 briefs on April 9, 2010. LCR 7(d)(3). Tumwater would not need to resubmit its previously filed
3 response in opposition to the park owners' motion.

4 Tumwater filed an objection to the park owners' renote the same day, arguing it would be
5 fundamentally "unfair" to permit the motion to be renoted. Obj. at 1-2. Tumwater provides
6 nothing to support this preposterous statement. *See id.* Tumwater suffers no prejudice. It does
7 not have to file anything new. Tumwater's objection should be seen for what it is: posturing to
8 obtain a tactical advantage. Tactical manipulation is also seen in Tumwater's summary
9 judgment motion, which is nothing more than a transparent attempt to circumvent the page limits
10 established in LCR 7(e)(3).

12 There is nothing inappropriate about the park owners' renote. Nothing in the local civil
13 rules precludes it. In fact, the renoting of a motion, even a summary judgment motion, is
14 permissible. *See, e.g., Pruitt v. Cheney*, 963 F.2d 1160, 1162 (9th Cir. 1991) (noting that a
15 reserve officer renoted her summary judgment motion challenging Army regulations that
16 required her discharge based on her homosexuality and that the district court later denied it).

17 C. CONCLUSION


18 No local civil rule requires the park owners to confer with Tumwater prior to noting their
19 summary judgment motion. Similarly, no local civil rule requires the park owners to confer with
20 Tumwater with respect to the renoting of that motion. There is nothing improper about the park
21 owners' renote for motion, especially when such renotices are permissible.

23 Tumwater's cross motion and its response in opposition raise nearly identical issues for
24 this Court's consideration. Given this similarity, the Court should permit the park owners to
25 renote their partial summary judgment motion for April 9, 2010 so that the Court may decide

1 both motions on the same day.

2 DATED this 25th day of March, 2010.

3 Respectfully submitted,

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DECLARATION OF SERVICE

On this day said forth below, I filed by CM/ECF a true and accurate copy of: Plaintiffs' Response to Defendant's Objection to Renoting of Plaintiffs' Motion for Partial Summary Judgment Motion in U.S. District Court Cause No. C09-5312 BHS to the following parties:

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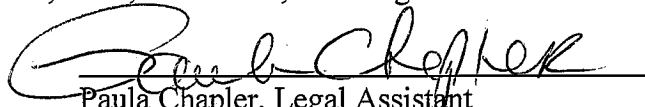
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Judge's Working Copies filed electronically for:

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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: March 25, 2010, at Tukwila, Washington.


Paula Chapler, Legal Assistant
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